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No. 89-1865

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

GUADALUPE COUNTY,
Petitioner,

v.

LORELEI CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner files this reply brief to the Brief in Opposition filed herein by respondent for the sole purpose of responding to that portion of respondent's brief entitled "Substantial Errors of Fact Committed By Petitioner in its Submission."

The section of the Brief in Opposition bearing the title just stated begins on page 19 of the brief and is divided into subparagraphs A through J, each of which quotes a statement from the petition which is asserted by respondent to contain a substantial error of fact. Each assertion will be responded to in the same order as made.

A. Respondent asserts, in summary, that it was in error for petitioner to state that Guadalupe County bought the 10 acres in question from the United States Marshal because, in fact, Guadalupe County bought only all right, title and interest of Vahlco Corporation in and to the land. The statement made in the petition is not in error. What was ordered sold, advertised for sale, bid on by Guadalupe County, and sold, was the 10 acres of land, not the interest of Vahlco Corporation in it. This was recognized by Judge Sessions in his order reforming the deed. (Appendix p. 19a, order of October 6, 1987, at pages 21a-22a). The deed, executed 30 days after the sale, erroneously conveyed only the interest of Vahlco Corporation. It was ordered reformed for this reason.

B. Respondent asserts that the petition is in error in quoting paragraphs 7 and 8 of the Fifth Circuit's opinion of October 16, 1985 in Cause No. 84-2617 (Appendix p. 12a), because in its subsequent opinion of March 9, 1990 in Cause No. 89-5556 (Appendix p. 1a), the Fifth Circuit withdrew what it previously had written. There is no error in the petition. The petition correctly quotes the language of the October 16, 1985 opinion of the Fifth Circuit. The treatment of this language by the Fifth Circuit in its later opinion of March 9, 1990 is subsequently addressed, primarily at pages 16 through 19 of the petition.

C. Respondent asserts the petition is in error in stating that both the $10,000 note and the $350,000 note were guaranteed by the SBA. Petitioner does not know whether the $10,000 note was guaranteed by the SBA. Petitioner will, without research into it, accept respondent's statement that it was not.

D, E and F. In each of the paragraphs respondent asserts the petition is in error in stating that Vahlsing controlled Margarita Oil Company, Ltd. and in stating that Vahlsing had Margarita do certain things. Respondent is correct that there has been no finding of fact, nor

has evidence been introduced proving, that Vahlsing controlled Margarita. The allegations of the United States go beyond control. The United States alleged that Margarita was the alter ego of Vahlsing but, by reason of Vahlsing's voluntary petition in bankruptcy, that issue has never been tried in the district court. The allegation has been adopted by Gary Knostman, Trustee of the Estate of Frederick Henry Vahlsing, Jr. in an adversary proceeding in the bankruptcy court. The trustee seeks to establish that Margarita, together with several other involved and a number of uninvolved other companies (34 in all) are each the alter ego of Vahlsing. It may be technically true, as stated by respondent, that there is nothing in the record to demonstrate that, as of the time of the sale, 1982, Vahlsing was an officer, director, employee, or agent of Margarita, or a shareholder of Margarita. But there are documents in the record in the trial court which demonstrate that, at least at an earlier date, Vahlsing was a director and president of Margarita, and that at the time in question, 1982, his wife was president of Rogann Continental Company, Ltd., which owned 100% of the stock of Margarita. All of the circumstances, taken together, compel the conclusion Vahlsing absolutely controlled Margarita, but it has not been proven in the record.

Whether Margarita was controlled by Vahlsing is material to this proceeding to the extent it demonstrates the situation which confronted Judge Sessions at the hearing of February 2, 1984, out of which arose the order of October 9, 1984 which was appealed by Margarita and Lorelei, and the order of February 25, 1985 that a supersedeas bond was required. There apparently was sufficient in the record to convince the court that some action was necessary to preserve the effectiveness of the court's decree and to protect the interests of the United States. This could be done without risk of harm to anyone because the proceeds of sale would be sufficient to pay the first lien indebtedness and no creditor is entitled to more.

More relevant, it is documented in the record that Vahlsing was president and sole director of Lorelei Corporation at the time Judge Sessions announced from the bench on March 23, 1982 that a verdict was being directed for the United States. Vahlsing retained this position until May 8, 1982, when he replaced himself. (This was one day after Margarita had posted notice of trustee's sale on May 7.) The relevancy is that when the property was deeded to Lorelei on June 4, following the trustee's sale on June 1, Lorelei then knew the property was to be sold under court order to pay the second lien.

G. Respondent asserts that the statement in the petition that, "When the government learned of this activity by Vahlsing, Margarita and Lorelei" is in error because there is no evidence of any activity by Vahlsing. Respondent's assertion emphasizes an interesting point. The Fifth Circuit held, both in its opinion of October 16, 1984 and its opinion of March 9, 1990, that Judge Sessions had no authority to order a sale when he did so on October 9, 1984. There is no question that Judge Sessions had the authority to order the sale of the property at the conclusion of the trial on March 23, 1982, when he made his pronouncement from the bench. He was deprived of his authority by reason of activity which took place after his pronouncement and before his order had been carried out. If the activity was directed by Vahlsing, then a U.S. District Court has been rendered impotent by a party against whom an adverse verdict had been rendered before the judgment could be enforced. It is documented that Vahlsing engaged in the activity at least to the extent of replacing himself as president and sole director of Lorelei Corporation after the property had been posted for sale by Margarita and less than 30 days before Lorelei purchased it. To the extent Vahlsing participated further than this, it has not been proven. Here again, the relevance is the state of the record at the time Judge Sessions entered his order of sale.

H. Respondent asserts petitioner was in error in stating, "The government contended at the hearing on February 2, 1984, that the conveyances from Vahlco to Magnum to Margarita to Lorelei were made for the purpose of thwarting the judgment of the U.S. District Court." There is no error. That was the government's position. On page 8 of the Brief of Plaintiff-Appellee in Cause No. 84-2617, the government states, "The related company transfers of the Seguin property from Vahlco to Magnum to Margarita to Lorelei were made to further avoid this judgment." Presumably, the transfer from Magnum to Margarita would be the trustee's deed. It served to divest Magnum of record title and to vest it in Margarita.

I. Respondent asserts the petition is in error in stating that, "The stay being lifted, the U.S. Marshal proceeded to implement the court's order of October 9, 1984, by advertising the property for sale and subsequently selling it to the highest bidder, which was Guadalupe County." Respondent asserts the Marshal did not sell the property but only all right, title and interest of Vahlco Corporation in the property. This would appear to be a repetition of the assertion made in subparagraph A. The statement made in the petition is not in error. As previously stated, what was advertised, bid on and sold was the 10 acres of land. The error was that of the Marshal when he prepared the deed to describe only the interest of Vahlco.

J. Respondent asserts the petition is in error in stating that, "The reason for the denial of the right to a trial on the merits is the title finding made by the court at a time when Guadalupe County was not yet a party." There is no error in the petition. The statement, of course, is not one of fact but is a statement of petitioner's construction of the opinion of the Fifth Circuit. In its opinion of March 9, 1990, the Fifth Circuit held that its earlier determination, in its opinion of October 16,

1985, that title had vested in Lorelei Corporation was the law of the case and binding on the court and all parties. Because it has been conclusively established that title to the property is held by Lorelei Corporation, Guadalupe County is denied the opportunity, at a trial on the merits, to prove that the trustee's sale was void by reason of the alter ego doctrine, or fraud. As of October 16, 1985, Guadalupe County was not a party. It purchased the property while that appeal was pending.

Respondent points out that Margarita had owned the lien for almost six years. That is true. Margarita purchased the first lien on August 20, 1976, shortly after the United States filed this suit to foreclose the second lien on April 8, 1976. It held the lien until it was foreclosed on June 1, 1982, shortly after the court had granted a directed verdict against Vahlsing, Vahlco and Magnum on March 23, 1982. During all of this time there is nothing to indicate that the maker of the note, Vahlco Corporation, or Magnum Machine and Tool Company, which had bought the land subject to the lien, ever made any payment on the indebtedness while it was owned by Margarita, or that Margarita ever made any effort to collect the indebtedness from either Vahlco or Magnum; that is, not until after the adverse decision in the trial court.

The second lien held by the SBA was not extinguished by Margarita's foreclosure of the first lien if both Margarita and Vahlco were the alter ego of Vahlsing because there would have been a merger of estates and an extinguishment of the first lien. Guadalupe County had no opportunity to prove that this was true because the title issue was held to have been decided at a time after Guadalupe County had bought and paid for the land but before Guadalupe County was a party.

CONCLUSION

The factual matters discussed herein are not directly relevant to the questions presented in the petition. However, this reply is necessary in order that there be an accurate as possible presentation of what occurred in the courts below.

Respectfully submitted,

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